

CED019

Local Plan Partial Review – Examination Matters, Issues and Questions Hearing Statement

Matter 3: Delivery Strategy
Issue 3e: Parks, Gardens, Open Spaces and
Waterways (Policy CR5)

February 2018



THE ROYAL BOROUGH OF
KENSINGTON
AND CHELSEA

Matter 3 – Delivery Strategy

Issue 3e: Parks, Gardens, Open Spaces and Waterways

8. **Is Policy CR5 as updated in the RBKCLPPR consistent with national policy and in general conformity with the London Plan? Is it justified in requiring all development to contribute towards improving open space?**
- 8.1 Policy CR5 as updated is consistent with national policy and in general conformity with the London Plan.
- 8.2 The updated part of Policy CR5 included in the RBKCLPPR is only concerned with aspects of the policy relating to planning contributions. The update is a high level principle that planning contributions will be sought. The Council's CIL Regulation 123 list and Planning Contributions SPD (when adopted) will set out the mechanism and circumstances where contributions will be sought. Planning contributions is a cross-cutting policy issue which required an aspect of the existing Local Plan Policy CR5 to be updated. This is to reflect that the Council now operates S106 Planning Obligations and Community Infrastructure Levy, two types of planning contributions.
- 8.3 The Council's Community Infrastructure Levy (CIL) Charging Schedule and Regulation 123 (R123) List took effect on 6 April 2015. This alters what the Council can negotiate in terms of S106 Planning Obligations. There have also been changes to the wider legislative, policy and guidance context relating to planning contributions which need to be reflected in the Local Plan Partial Review. This is set out in Section 2.2 of the Policy Formulation Report for Infrastructure and Planning Contributions (SUB29). Paragraphs 2.2.3 to 2.2.5 specifically explain the relationship between S106 Planning Obligations and CIL and how they can operate together. In particular it explains that *“the Government considers there is still a legitimate role for development-specific planning obligations to enable a local planning authority to be confident that the specific consequences of a particular development can be mitigated”*¹. The updated aspect of Policy CR5 is reflective of this.
- 8.4 Existing Local Plan Policy CR5 requires a “S106 contribution... towards improving existing publicly accessible open space” where open space cannot be provided on site as part of a major development. However, the Council's more recent Regulation 123 List includes open space as an item intended to be funded by CIL and so can no longer be funded by S106 Planning Obligations, except where the R123 list 'exceptions' apply (for example, on-site provision as part of strategic sites). This is consistent with the Section 216(2) of the Planning Act which includes open space as a type of infrastructure. The existing Local Plan policy has been updated to reflect that the Council now operates CIL alongside S106 Planning Obligations.

¹ NPPG CIL Paragraph 094

Therefore, the scope of the Local Plan Partial Review does not cover other aspects of Policy CR5 which were considered as part of a previous review to the Core Strategy and relates only to seeking planning contributions (CIL and S106 Planning Obligations).

- 8.5 The exceptions to the Regulation 123 List for which provision will be made by S106 planning obligations includes "On-site provision of infrastructure required in accordance with the Development Plan"². The RBKCLPPR contains a number of site allocations in the Places Chapters which include a requirement for open space provision where appropriate, for example Policy CA1 Kensal Canalside Opportunity Area, Policy CA4 Land Adjacent to Trellick Tower, Policy CA6 Earls Court Exhibition Centre, and Policy CA9 Lots Road Power Station.
- 8.6 The amended wording clarifies Community Infrastructure Levy or, where exceptions apply, Planning Obligations will be sought using the umbrella term Planning contribution. This reflects that there are limited opportunities to create larger areas of public open space because of the location and potential size of development opportunities and the fact that many sites in the borough have constrained boundaries. The approach also reflects Paragraph 203 of the National Planning Policy Framework which states that "*Planning Obligations should only be used where it is not possible to address unacceptable impacts through a planning condition*" and NPPG CIL Paragraph 094 (see paragraph 1.2 above).
- 8.7 Since the Submission of the RBKC LPPR the Council has consulted on a Draft Planning Contributions SPD. This will replace the existing Planning Obligations SPD, setting out how CIL and S106 Planning Obligations will operate alongside each other in the borough, and the Planning Obligations that development will be required to make. The Draft Planning Contributions SPD references the CIL Regulation 123 list and does not seek planning obligations for open space improvements from development. This reflects that it is an item intended to be funded by CIL. Together the Regulation 123 list and Planning Contributions SPD (when adopted) will set out the mechanism and circumstances where contributions will be sought.
- 8.8 London Plan Policy 2.18 Green Infrastructure states that "*Enhancements to London's green infrastructure should be sought from development*". This is addressed through the Councils Regulation 123 List clarifying that open space is intended to be funded through the Community Infrastructure Levy, except where "exceptions" apply.
- 8.9 London Plan Policy 7.18 Protecting Open Space states that "The Mayor supports the creation of new open space in London to ensure satisfactory levels of local provision". This is addressed as part of the RBKCLPPR site allocations (see paragraph 8.3 above). Where open space requirements are specified as part of site allocations, contributions from CIL will not be appropriate for this type of infrastructure as they will be sought on site.

² Community Infrastructure Regulation 123 List, Exceptions from the R123 list of R123 List table

- 8.10 Whilst the Mayor’s Letter of General Conformity does not explicitly comment on CR5 the Mayor does conclude that the current draft of the RBKCLPPR, which includes Policy CR5 as amended, is in general conformity with the London Plan.
- 8.11 Given the above, that CIL and planning obligations, where exceptions apply, will provide contributions to open space improvements, the approach is justified.
9. **Would the designation of a Local Green Space at Meanwhile Gardens in Golborne be justified as part of the RBKCLPPR? Would this be necessary for soundness of the Plan?**
- 9.1 Meanwhile Gardens is a designated Site of Importance for Nature Conservation (SINC) in the existing consolidated Local Plan – an area designated for its importance for wildlife and for people to experience nature. NPPG paragraph 11 states that *"If land is already protected by designation, then consideration should be given to whether any additional local benefit would be gained by designation as Local Green Space."* The Gardens are already protected by adopted Local Plan Policy CR5 (a) which resists the loss of existing public open space. It is not clear what Local Green Space designation would achieve over and above this.
- 9.2 Paragraphs 76-78 of the NPPF and the NPPG on Open Space, Sports and Recreation Facilities, Public Rights of Way and Local Green Space provide detailed policy and guidance for Local Green Space designations. This includes clarifying that a local green space can be designated through either Local Plans or Neighbourhood Plans. This is not within scope of the LPPR. As explained in the Policy Formulation Report the scope of the review of Policy CR5 relates to seeking planning contributions, reflecting that the Council operates Community Infrastructure Levy alongside S106.
- 9.3 As Meanwhile Gardens is already protected by a designation it would not be justified to designate it as a Local Green Space as part of the RBKCLPPR. A designation could also be brought forward through a Neighbourhood Plan which covers the area.
10. **Should consideration be given to other aspects of policy CR5 as part of this partial review, including a full review of indoor and outdoor recreation facilities, biodiversity enhancements on key waterways and the designation of local green spaces? If not when would these issues be considered?**
- 10.1 The NPPF paragraph 153 states that a local Plan *"can be reviewed in whole or in part to respond flexibly to changing circumstances"* and the NPPG on Local Plans Paragraph 08 states that *"reviews should be proportionate to the issues at hand..."*
- 10.2 Planning contributions is a cross-cutting policy issue which required an aspect of the existing Local Plan Policy CR5 to be updated.

- 10.3 The scope of the review was set by the topics / issues in the Issues and Options consultation stage (December 2015). The Council specifically consulted on the scope of the review as part the Issues and Options Consultation, the responses received did not seek to increase the scope of review of policy CR5.
- 10.4 The Council considers that representations seeking issues to be added to the scope of the review at Regulation 19 Publication Policies (SUB5) stage are not timely. The opportunity was provided at pre-Regulation 18 Issues and Options stage. These requests do not raise soundness issues.
- 10.5 As set out in the Policy Formulation Report (paragraph 4.2.6) for Infrastructure and Planning Contributions (SUB29), the Council's response to Inspector's initial questions (CDED001) and in response to question 8 above, the policy has only been amended in respect of planning contributions to reflect that the Council now operates CIL alongside S106 planning obligation.
- 10.6 Policy CR5 was reviewed and adopted in December 2014 as part of the Conservation and Design review of the Core Strategy. The Inspector³ considered the entire policy and concluded that, subject to one modification, Policy CR5 is effective. The modification was to include reference to communal gardens in part c of the policy. There have been no significant national policy changes in respect of Parks, Gardens, Open Spaces and Waterways since this review.
- 10.7 The Council intends to review other aspects, those that do not relate to planning contributions, as part of the early review of the Local Plan to be adopted within five years of adoption of this LPPR.

³<https://www.rbkc.gov.uk/pdf/Report%20Cons%20%20Design-%20Amended%20Final%2018-11-14.pdf>